

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MURAD WILLIAMS,

Petitioner,

v.

THOMAS BIRKETT,

CASE NO. 07-15376
HONORABLE ARTHUR J. TARNOW
MAG. JUDGE R. STEVEN WHALEN

Respondent.

**ORDER RE: REPORT AND RECOMMENDATION,
DENYING MOTION FOR DEFAULT AS MOOT,
GRANTING AN EVIDENTIARY HEARING
AND APPOINTMENT OF COUNSEL**

Before the Court is Magistrate Judge Whalen's Report and Recommendation [Docket #22] filed August 25, 2009. The Magistrate Judge recommends that this Court grant petitioner's application for the writ of habeas corpus. The Magistrate Judge further recommends that any further state court proceedings be conducted by a different judge and the Petitioner's Motion for Default Judgment, which he construed as a reply brief, be denied as moot.

Respondent filed objections on September 3, 2009 [Docket #23]. Respondent requests the Court either deny the petition or grant an evidentiary hearing. Further, Respondent requests that if the Court grant habeas relief, it is limited to the claimed denial of a revocation hearing and not require further proceedings be held before a different judge.

Having reviewed the file, the Report and Recommendation and the objections, the Court **ADOPTS IN PART** the Report and Recommendation as to the Petitioner's Motion for Default Judgment being denied as moot.

Pursuant to Respondent's request in his objections, an evidentiary hearing will be set on Petitioner's claims. The hearing should include Petitioner's school history as well as the usual evidence relevant to the case.

Because this Court is ordering an evidentiary hearing, counsel will be appointed for Petitioner pursuant to 18 U.S.C. § 3006A(a)(2)(B) and 28 U.S.C. § 2254 Rule 8(c). Appointment of counsel in a habeas proceeding is mandatory if the district court determines that an evidentiary hearing is required. *See Lemeshko v. Wrona*, 325 F. Supp, 2d 778, 787 (E.D. Mich. 2004).

The Court will also order petitioner's counsel to file a supplemental brief within sixty days of this order.

Based upon the foregoing, **IT IS HEREBY ORDERED** that an evidentiary hearing in this case will be set.

IT IS FURTHER ORDERED that an attorney from the Federal Defender's Office shall be appointed to represent Petitioner in this case.

IT IS FURTHER ORDERED that counsel shall file a supplemental brief within sixty days of this order.

IT IS FURTHER ORDERED that Petitioner's Motion for Default Judgment is DENIED as moot.

S/Arthur J. Tarnow
Arthur J. Tarnow
United States District Judge

Dated: September 10, 2009

I hereby certify that a copy of the foregoing document was served upon parties/counsel of record on September 10, 2009, by electronic and/or ordinary mail.

S/Catherine A. Pickles
Judicial Secretary